

# Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning the player Arvydas Novikovas

## COMPOSITION:

**Frans DE WEGER (The Netherlands)**, Chairperson  
**André dos Santos MEGALE (Brazil)**, Member  
**Khadija TIMERA (Senegal)**, Member

## CLAIMANT / COUNTER-RESPONDENT:

**Arvydas Novikovas, Lithuania**  
Represented by Talat Emre Koçak

## RESPONDENT / COUNTERCLAIMANT:

**Samsunspor, Türkiye**  
Represented by Anıl Dinçer

## INTERVENING PARTY:

**Hapoel Haifa FC, Israel**  
Represented by Nir Inbar

## I. Facts of the case

1. On 17 June 2022, the Lithuanian player, Arvydas Novikovas (hereinafter: **the player** or **the Claimant / Counter-Respondent**), and the Turkish club, Samsunspor (hereinafter: *the club* or **the Respondent / Counterclaimant**) concluded an employment contract valid as from 28 June 2022 until 31 May 2024 (hereinafter: **the Employment Contract**).
2. In accordance with the information available in the Transfer Matching System (**TMS**), the player was born on 18 December 1990.
3. Pursuant to article 4 of the Employment Contract, the parties agreed upon an automatic extension linked to the performance of the player, quoted *verbatim*:

*“b) In case the Player is fielded in 25 matches (only in the official League matches for more than one minute) and his total number of goal and assists reaches 5 (five) at the end of 2023/24 football season; then the Contract will be automatically extended and will be valid for 2024/25 football season, until 31.05.2025. The Player hereby explicitly agrees and accepts not to give any objection to this extension option in the future.*

*c) the duration of the football season means the season, the commencement and expiry dates of which are already determined / to be determined by the TFF according to the Statutes of the Leagues, UEFA and FIFA. The wider definition of and term of what constitutes an official match shall prevail, and includes all cup matches as well connected to the given season”.*

4. Pursuant to article 6 of the Employment Contract, the club undertook to pay the player the following amounts:
  - a. For the season 2022/2023:
    - EUR 200,000 net as salary, payable in 10 instalments of EUR 20,000 net each between 30 August 2022 and 30 May 2023; and
    - EUR 12,000 net as car and accommodation allowances, payable in 12 instalments of EUR 1,000 net each between 30 June 2022 and 30 May 2023.
  - b. For the season 2023/2024:
    - If disputing the TFF League 1: EUR 220,000 net as salary, payable in 10 instalments of EUR 22,000 net each between 30 August 2023 and 30 May 2024;
    - If disputing the Super League: EUR 225,000 net as salary, payable in 10

instalments of EUR 22,500 net each between 30 August 2023 and 30 May 2024;

- In any scenario: EUR 12,000 net as car and accommodation allowances, payable in 12 instalments of EUR 1,000 net each between 30 June 2023 and 30 May 2024.

c. For the duration of the Employment Contract:

- EUR 1,000 net per match won;
- EUR 15,000 net in case the player's total goal and assist number was equal or higher than 15 at the end of the respective season; and
- EUR 30,000 net in case the club's team promoted to the Super League.

5. Furthermore, article 7 of the Employment Contract read as follows:

*"a) In the case that the Club relegates and the Player is no longer able to play as a registered player as a result of such relegation according to the TFF Regulations during the term of this Contract, then this Contract shall be deemed to be terminated automatically. In such case the Club hereby agrees to pay all the amounts due to Player until the time of relegation. The Parties hereby agree, declare and undertake that if this Contract is terminated due to relegation of the club, the Parties irrevocably accept, declare and undertake that they will not claim any compensation, receivables and rights from each other due to the termination of the Contract.*

*b) The Contract hereunder can be terminated by the Player with just cause if the cause of event is not cured within 30 (thirty) days following the written notice by the player to the Club. (example: Non-payment of at least two-monthly salaries by the Club).*

*c) In case the club relegates from TFF league 1 to League 2 during the term of the Contract, this contract will automatically null and void and can be unilaterally terminated by any party with just cause".*

6. Also on 17 June 2022, the same parties signed an amendment to the Employment Contract (hereinafter: **the Amendment**). Contextually, the remuneration due to the player under article 6 of the Employment Contract was amended as follows:

a. For the season 2022/2023:

- EUR 40,000 net as sign-on fee, payable in 7 days as from the signature;

- EUR 380,000 net as salary, payable in 10 instalments of EUR 38,000 net each between 30 August 2022 and 30 May 2023;
- EUR 12,000 net as car and accommodation allowances, payable in 12 instalments of EUR 1,000 net each between 30 June 2022 and 30 May 2023.

b. For the season 2023/2024:

- If disputing the TFF League 1: (i) EUR 21,000 in 30 days as from 1 June 2023; and (ii) EUR 420,000 net as salary, payable in 10 instalments of EUR 42,000 net each between 30 August 2023 and 30 May 2024;
- If disputing the Super League: (i) EUR 22,5000 in 30 days as from 1 June 2023; and (ii) EUR 450,000 net as salary, payable in 10 instalments of EUR 45,000 net each between 30 August 2023 and 30 May 2024;
- In any scenario: EUR 12,000 net as car and accommodation allowances, payable in 12 instalments of EUR 1,000 net each between 30 June 2023 and 30 May 2024.

c. For the duration of the Employment Contract:

- EUR 1,000 net per match won;
- EUR 15,000 net in case the player's total goal and assist number was equal or higher than 15 at the end of the respective season;
- EUR 30,000 net in case the club's team promoted to the Super League.

7. On 24 October 2022, the club addressed a warning letter to the player stating *inter alia* the following, quoted *verbatim*:

*“Unfortunately, our Club representatives have been informed by the Club Manager and technical team that you have a lack of performance, lack of harmony with your teammates during trainings and reluctantly doing training with your teammates which completely affect the team and your teammates’ performance and motivation. We also learn that you have not been fully and properly following the oral instructions of the Manager of the Club in the trainings.*

*For these reasons explained above, we hereby inform you, as a warning and notice, that you are requested to provide your defences for the abovementioned infringements to our Club via mail (info@samsunspor.com.tr) in 24 hours following the notification of this letter.*

*In case of failure, you will be deemed to have waived your right to submit any defence. In addition to above, in accordance with the report that was received from our Club's manager and technical team, you have been taken out of the squad for 30 days (or less than 30 days in case of further notification) due to above-mentioned reasons. It should be known that our Club's purpose is not to damage your career, but our Club has nothing to than giving this decision because of your unprofessional and unsporting behaviour that negatively affect A team's harmony and performance. During this time, you will be doing individual training according to the training schedule that will be provided to you. Our Club will provide you a coach, personal trainer, pitch, equipment, and all necessary stuff.*

*Our Club also maintains to pay your remuneration according to the due dates as written on the Employment Agreement.*

*Lastly, our Company reserves your right for a fair hearing and will provide you with a chance for verbal defence if requested".*

8. On 25 October 2022, the player provided the club with his "*defence and objections to the notification*". Contextually, he argued that "*that there are no grounds for such an assessment of my commitment and dedication during any practice sessions, official matches, as well as the relationship with my teammates*". Moreover, he pointed out to the facts that (i) no elements or clear arguments had been raised by the club, as well as no performance issue existed; and (ii) the club's decision to exclude him from the first squad amounted to a breach of contract and aimed at avoiding the fulfillment of sporting goals and the automatic extension of the Employment Contract for the following season.
9. On 26 October 2022, the club invited the player for the disciplinary meeting taking place the following day, at its premises.
10. On 28 October 2022, the Lithuanian Football Federation (**LFF**) addressed a letter to the club requesting his release for participating in matches for the Lithuanian national team from 14 until 20 November 2022.
11. On 1 November 2022, the Board of Directors of the club passed a decision in connection with the disciplinary proceedings opened against the player in the end of October 2022 (hereinafter: **the Disciplinary Decision**). The operative part of the Disciplinary Decision reads *inter alia* as follows (quoted *verbatim*):

*"Our football player, Mr. Arbydas Novijovas will maintain to do personal training as being separated from the first team and will be fined in a total amount of 4.500.-EUR due to the lack of performance, lack of harmony with his teammates and not fully following the instructions and directives of the manager".*

12. Furthermore, the Disciplinary Decision also established *inter alia* the following regarding the player's defence and behaviour:

*"However, unfortunately; our Club could not find any solution to fix that problem with you because you have directly rejected all our Club's suggestions. Our Club's representatives were really in a position to fix this problem with you, but you had to be aware of your actions and behaviours first.*

*In your notifications; as you mentioned, the word of "lack of performance" seems subjective according to your words. However, this can be proved with the report that we received from our Club's manager, the data collected from our data analysts, etc.*

*The disciplinary decision given about you is not just about the lack of performance, also your unprofessional and unsporting behaviours and actions on the pitch during the trainings and matches. (Such as not being fully focused on the training, not properly following the instruction given by the manager, lack of communication with your teammates, etc.)*

[...]

*Our Club has never had any purpose to take you out of the squad and fine you. However, your unwillingness and being unmotivated on the pitch during the trainings and matches have completely demotivates your teammates and reduces their performance.*

*This decision has not been given in one day. This decision is a result of your actions and behaviours which maintains for a long time. Our Club's Manager was considering giving this decision before, but he was always thinking about you to be aware of that and not to repeat it again.*

*You have been excluded from the first team for 30 days before receiving your defence letter, because this action is about your repetitive actions such as not properly doing training, not fully following the instructions of the manager, being unmotivated to do training and play football and having a negative impact on your teammates. Our Club had nothing to do than excluding you from A team training just for a limited period of a time.*

[...]

*For this reason, you will maintain to do personal training as being separate from the first team until the end of the deadline that was provided in our previous correspondence.*

*As mentioned before; personal training program has been sent to you in a weekly basis. You have been doing training in the first team's facilities. Our Club has also been*

*providing you all necessary staff and equipment. (Coach, physiotherapist, doctor, training kit, etc.)*

*Briefly, our Club takes you separate from the first team just for you to increase your performance and being more motivated. Our Club will provide you whatever you need during that period. Please also request from our Club representatives if you might need anything more. It is important to emphasize that you would be exactly in same condition with our other first team players.*

*As a response to your false claim about that our Club has been trying to limit the possibility of the fulfilling the conditions for the automatic extension of the Employment Agreement; it is our Club's and Manager's decision to put you to first 11 or to take you to the bench or take you out of the squad because of sporting and other reasons. This decision is mainly based on your performance and motivation. Even you are taken back to the first team trainings and keep doing training with the first team, it does not mean that our Club gives you a guarantee that %100 you will be in first 11 in the match. For this reason, your performance is the only one condition that affects this automatic extension clause.*

[...]

*Our Club wishes you to be aware of your behaviours and actions that are well explained above and respect our Club's decision.*

- Acting against the Club Disciplinary Regulation regarding 2022/23 football season*
- Acting contrary to sports discipline in the football pitch and during the trainings*
- Failing to comply with the training program notified by the manager in the trainings*
- Failing to be exercising the training program exactly or as required and failing to show necessary effort and necessary seriousness during the trainings*

*Lastly, in the light of all behaviours and actions explained above; our Club has a right to fine you in a total amount of 10.600.-EUR in accordance with the VI - Punitive Acts / Misbehaviour - clauses A and G of the Disciplinary Regulation of Our Club in 2022/23 football season. The calculation is based on 15 days cost/ 300 days \* 212.000.-EUR (your total guaranteed receivables during 2022/23 football season as written on your Employment Agreement).*

[...]

*As not having an intention to give a maximum amount of fine described above, our Club's board has decided to fine you in a total amount of 4.500.-EUR, which will be deducted from your future receivables.*



*Our Club hereby reserves its right to initiate further legal actions in accordance with the FIFA Rules & Regulations and the Club's Disciplinary Regulation regarding 2022/23 football season.*

*Our Club lastly reminds you that our Club will immediately apply to FIFA, take all necessary legal actions, and request compensation for the early termination regarding the remaining part of the contract in case you unilaterally terminate your Employment Agreement without just cause”.*

13. On 2 November 2022, the club served the player with another letter. Contextually, it reiterated the reasons why the player was separated from the rest of the team and informed that such decision was a response to his *“irresponsible actions and behaviours”*, and it was not permanent. Additionally, the club stressed that the player could have access to the same premisses and professionals as his teammates, hence he was requested to continue with the individual trainings per the instructions of the coaching staff.
14. On 3 November 2022, the club acknowledged receipt to the LFF’s request for the release of the player and informed him that he was *“permitted to fly to Lithuania on 11 November 2022”* and should return 10 days after.
15. On 8 November 2022, the player via his legal representatives disputed the Disciplinary Decision. *Inter alia*, the player insisted that the club’s allegations of poor performance, unprofessional behaviour and corresponding breaches of contract were groundless and unspecified, as well as no evidence was produced to this extent. He moreover reiterated his argumentation as to being prevented to reach the sporting goals stipulated in the Employment Contract and requested the club to reconsider the decision under penalty of addressing the case to FIFA.
16. On 11 November 2022, the club replied to the player’s letter above and recalled the same argumentation included in the Disciplinary Decision. The club referred to its Disciplinary Regulations (hereinafter: ***the Disciplinary Regulations***), allegedly signed by all the players, and argued that its decision was reasonable and proportionate *vis-à-vis* the severity of the facts. It furthermore attached copies of reports signed by its managers corroborating that the player was not performing at his maximum capacity, as well as insisted that there was no breach of contract from its side.
17. On 14 November 2022, the player informed that his reply would be forwarded to the club on 16 November 2022.
18. On 16 November 2022, the club invited the player and his representative for a meeting taking place on 23 November 2022 to discuss an *“amicable solution”* for the matter.
19. On 16 November 2022, the player, as previously announced, filed his position against the club’s letter of 11 November 2022. Accordingly, he *inter alia* highlighted that:



- he did not sign the Disciplinary Regulations of the club and – in any event – they would only be applicable *“as long as they do not decrease any of the rights guaranteed to the player”* and only if they were provided in advance, which was not the case;
  - his procedural rights were not respected during the proceedings as he only had one day to file a defence and was not provided with the (also unmotivated) reports from the team’s managers before the hearing. The player also challenged the participation of the translator in the meeting, in particular, the fact that he did manifest his own opinion and acted as a witness instead of a proper facilitator;
  - the evidence used by the club was not conclusive as to his performance and could be contradicted by the official statistics from the latest matches disputed with the club’s team; and
  - there were still outstanding payments by the club towards the player that should immediately be cured, including the match bonuses due irrespective of the player’s participation.
20. On 18 November 2022, the club replied to the player and confirmed that a meeting would soon be held with the presence of a different translator. The club also echoed his argumentation as to the breaches of contract by the player in line with its previous correspondences.
21. On 28 November 2022, the player sent a letter to the club by means of which he (i) recalled the previous events and exchanges between the parties; (ii) acknowledged that, during the meeting held on the same day, the club requested the termination of the Employment Contract and tried to force him to leave the team; and (iii) granted a final deadline of 5 days for the club to reintegrate him to the first team and cease any type of discrimination.
22. On 30 November 2022, the club replied to the player’s warning and stated as follows, quoted *verbatim*:
- “Our Club hereby would like to kindly inform you that you will start to be training with our first team again as starting from tomorrow.*
- In this respect, you are expected to regularly participate in all first team trainings, give your utmost effort for our first team as properly following our manager’s and coaches’ instructions and to be fully concentrate and motivated during the trainings”.*
23. On 5 December 2022, the player wrote back to the club and stressed that he was still being discriminated, while being forced to train alone, excluded from official appointments, and

prevented from joining the team's group in the electronic application WhatsApp. The player wrote *inter alia* the following, quoted *verbatim*:

*"9- It is out of question that the Player cannot practice his profession and cannot exercise his rights stemming from the employment contract and employment rules. The Player hereby asks as a last time, to stop all discriminations made by the Club and to reintegrate the Player to A-team correctly, without being put any pressure to leave the Club and put an end to the employment contact. In case the Club does not end the discriminative acts and behaviors as stated above and allow the Player to have all the rights that other A-team players have within 7 (seven) days from the notification of this letter. In the event that the Player would not be reintegrated as it should be and not be allowed to have all the rights that the other A-team players have and exercise like all other A-team players have, the Player will terminate the employment contract with just cause and with immediate effect.*

*10- Consequently, in the light of the aforementioned explanations and facts, the Player hereby grants a deadline of 7 (seven) days to the Club to take him back properly to A-team and put an end to the discriminative acts and behaviors and not act in line with the employment rules within the granted deadline, the Player will terminate the contract and apply to the courts and decision-making bodies for a formal decision and claim compensation".*

24. On 9 December 2022, the club replied to the player and informed that he had been properly reintegrated to the squad and no type of discrimination was in place. In the club's opinion, the player should be only focused in improving his performance so that he could be fielded as well as pointed out the following, quoted *verbatim*:

*"Our Club does not would like to have any other problem with you, that is why our Club did not initiate any disciplinary proceeding against you. We hereby kindly warn you one more and last time that please do not force to enter to the meeting room not make noise outside of the room during the meeting in which the players who will play in the next match attend not to use your phone during the trainings and not to record and photograph or video inside the facilities and on the first team training pitch".*

25. The club also stated that any termination by the player would be deemed without just cause and held against him before FIFA.
26. On 27 December 2022, the player wrote to the club and acknowledged that he was still prevented from joining the trainings and being forced by the club's representatives to sign a mutual termination of the Employment Contract. He added that he was not invited to a winter camp and could not participate in trainings since November 2022. The player requested the club to *"invite and add the Player to the camp squad and admit him to join A-team within 3 (three) days from the receipt of this letter, in case of the Club did not act in line with the employment rules and FIFA and the CAS jurisprudences the Player will unilaterally*

*terminate with just cause pursuant to the provisions of FIFA rules and the employment rules and by the Notifying Party (The Player)".*

27. On 29 December 2022, the club replied to the player. It denied having engaged in any attempt to terminate the Employment Contract and alleged that he was only not invited to the winter training camp because *"according to our manager's and coaches' reports, [the player] is physically and conditionally not good enough for winter training camp"*. Consequently, the player would be provided specific training for conditioning and strength.
28. On 2 January 2023, the club fined the player in a total amount of EUR 21,000 *"due to non-attendance to the trainings at least three days in a row"*, namely from 30 December 2022 until 1 January 2023. In the notification, the club wrote as follows: *"please note that you are expected to do training and follow all given instructions. First team will return to Samsun next week and you will maintain to do training with the first team as a first team player starting from next week"*.
29. On the same date, *i.e.*, 2 January 2023, the player notified the club of the termination of the Employment Contract. In short, the player informed that he was demoted from the A-Team of the club, illegally fined, excluded from a winter camp, and forced to train alone. As such, he claimed having been repetitively discriminated and reserved his rights to seek relief before FIFA.
30. On 4 January 2023, the club replied to the termination notice by the player and opposed to the reasons listed therein. It argued that such termination was not grounded and would be deemed without just cause, and it invited the player to withdraw his termination within the following two days and discuss an amicable solution.
31. On 22 January 2023, the player entered into a new employment agreement with the Israeli club, Hapoel Haifa (hereinafter: **Hapoel** or **the Intervening Party**) valid as from the date of signature until 31 May 2023.
32. Accordingly, the player is entitled to a monthly salary of NIS 95,287 from February 2023 until May 2023, as well as accommodation allowance of NIS 4,500 for the same period.

## II. Proceedings before FIFA

33. On 22 February 2023, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. Claim of the player

34. In his claim, the player explained that as from November 2022, the club decided that he should no longer be part of its first team and started adopted controversial behaviours

towards him. In particular, the player claimed that he was demoted from the A-team trainings and forced to terminate the employment relationship up until the date the termination letter was sent (*i.e.*, 2 January 2023).

35. The player considered that the termination took place with just cause and the club shall be liable to the consequences that follow. He requested to be awarded the following amounts:
- a. EUR 72,500 as outstanding remuneration, corresponding to outstanding salaries for 2022 (EUR 66,500) and allowance from July until December 2022 (EUR 6,000);
  - b. EUR 600,500 as compensation for breach of contract, corresponding to the residual value of the Employment Contract and its Amendment *minus* the alleged mitigation with Hapoel;
  - c. EUR 135,000 as additional compensation, corresponding to three monthly salaries; and
  - d. 5% interest *p.a.* as from the due dates for the outstanding remuneration and from the date of termination for the compensation.

**b. Reply and counterclaim of the club**

36. On 30 March 2023, the club filed its reply to the claim of the player and lodged a counterclaim against him.
37. In its reply, the club opposed to the narrative of the player as to the behaviour of the parties and the justice of the termination. In its view, the player was never discriminated and, on the contrary, adopted an unsporting and unprofessional behaviour by underperforming, being aggressive with teammates and coaching staff, filming the trainings and other team members, and missing official appointments. The club also maintained that – after the exchanged between the parties – the player was duly reintegrated to the first team (*cf.* pictures of trainings, notary document establishing that he trained with the first team on 7 December 2022, and official media releases informing that he would be reintegrated following previous exclusion).
38. Furthermore, the club argued that it acted in line with its Disciplinary Regulations by fining the player in two opportunities: firstly because of low performance and misbehaviour, for an amount of EUR 4,500, and secondly for the unjustified absence for three days for an amount of EUR 21,000. Likewise, by recalling the extensive exchanges of correspondences, the club argued that it has always acted in good faith and even gave the opportunity to the player to withdraw from the termination to no avail.
39. Given the above, the club argued that the player incurred in the following breaches of contract:

- Refused to sign the Disciplinary Regulations of the club for the 2022/2023 season;
  - Refused to follow the instructions of the coaching staff. Moreover, he was allegedly doing a personal training to improve his performance, so was never segregated from the rest of the first team;
  - Took his phone to the trainings, recorded videos and photos during the practices, and forced to enter the meeting room of the first squad when he was not part of said group therefore *"damaging the atmosphere and motivation inside the team"*;
  - Missed trainings (and personal sessions) without explanation; and
  - Did not grant the 30 days' deadline as requested in the Employment Contract and preferred to terminate their relationship.
40. In parallel, the club explained that it paid EUR 166,373 for the duration of their employment relationship, and submitted receipts, bank statements and hotel invoices. In doing so, it acknowledged a debt towards the player amounting to EUR 70,627, as opposed to the EUR 72,500 claimed. This amount, however, should also suffer a reduction of EUR 25,500, corresponding to the two fines imposed by the Board of Directors (*i.e.*, EUR 4,500 and EUR 21,000, respectively).
41. In contrast, the club claimed that it should be the party entitled to compensation for breach of contract amounting to EUR 631,000 net (*i.e.*, the residual value of the Employment Contract per its Amendment without consideration the allowances). Likewise, it argued that it *"had to transfer Mr. Moussa Yann Cedric Guel for the position of the Claimant following of his unjust termination"*. Consequently, the club requested the player to pay EUR 170,000 to said player as replacement cost, totalling EUR 810,000 plus interests.
42. Alternatively, the club challenged the *quantum* claimed by the player as compensation for breach of contract based on the following comments:
- the car and accommodation allowance should not be taken into consideration or, at least, should total EUR 17,000 instead of the EUR 18,000 claimed;
  - the residual value of the Employment Contract should be calculated taking into consideration the salary due to the player while playing the League 1 rather than the Super League;
  - even if with just cause, the termination did not take place due to overdue payables, hence no additional compensation is applicable; and
  - the compensation should be mitigated considering the player's new salary with Hapoel.

43. The requests for relief of the club were as follows, quoted *verbatim*:

*“- To reject all claims of the Claimant stated in his application to your Court on 22.02.2023 and dismiss his application dated 22.02.2023.*

*- In case of acceptance the claims of the Claimant, to deduct all remuneration stated herein (especially between 126-133 of this letter) because of wrong calculation and also ALL remunerations in the Claimant’s new employment agreement from total compensation amount if it is decided.*

#### COUNTER-CLAIM

*1. To accept the claims (counterclaims) of the Club Samsunspor.*

*2. To condemn the Claimant that the Employment Agreement was unilaterally terminated by the Claimant without just cause and the Claimant has seriously breached the Contract.*

*3. to condemn the Claimant to pay in favor of the Respondent/Counterclaimant Net 801.000 EUR (residual value of the Employment and Amendment Agreements and replacement costs), as compensation for the breach of contract along with its interest of 5 % p.a. starting from the date of the present claim, in accordance with article 17 para. 1 of the Regulations on the Status and Transfer of Players and FIFA’s commentary on the Regulations.*

*4. to impose a sporting sanction between 4-6 months against the Claimant for breach of the Employment Agreement as unilaterally terminating the Contract without just cause, in accordance with the Article 17 para. 3 of the Regulations on the Status and Transfer of Players.*

*5. to establish that the costs of the present arbitration procedure shall be borne by the Respondent”.*

#### **c. Reply to the counterclaim of the player**

44. On 14 April 2023, the player filed his reply to the counterclaim and shortly reiterated both his argumentation regarding the justice for the termination of the Employment Contract as well as his requests for relief stated in his statement of claim.

#### **d. Position of Hapoel**

45. On 11 May 2023 and in light of any potential consequences in connection with art. 17, par. 2 of the FIFA Regulations on the Status and Transfer of Players (**RSTP**), Hapoel was invited by the FIFA general secretariat to file its position on this matter.

46. On 7 June 2023, Hapoel filed its submission. In doing so, it first of all reiterated the player's argumentation regarding the just cause for the termination of the Employment Contract.
47. In addition, Hapoel stressed that it engaged the player in the TMS as "out of contract", as well as was informed that just cause existed for the previous termination. Likewise, it pointed out that the new contract signed with the player includes a much lower amount, corroborating the fact that no inducement existed.
48. Given the above, Hapoel claimed that (i) no sporting sanctions are applicable in any scenario; and (ii) the club did not prove its damages and, to the contrary, there was a mitigation, entailing that no compensation is due.

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

49. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 22 February 2023 and submitted for decision on 7 July 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
50. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. 1 lit. b) of the RSTP (May 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Lithuanian player and a Turkish club, with the involvement of a Israeli club.
51. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the RSTP (May 2023 edition) and considering that the present claim was lodged on 22 February 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### b. Burden of proof

52. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Chamber stressed



the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the TMS.

### **c. Merits of the dispute**

53. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments, and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

#### **i. Main legal discussion and considerations**

54. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that it pertains to a claim for breach of contract lodged by the player against the club, and a corresponding counterclaim opposing the same parties and with the intervention of Hapoel.

55. The player terminated the employment relationship on 2 January 2023, due to the alleged abusive behaviour of the club towards him. Specifically, the player argued that he was demoted from the A-Team, illegally fined, excluded from a winter camp, discriminated, and forced to train alone.

56. The club, on the other hand, asserted that no type of segregation existed, and any potential breach was remedied before the termination. Consequently, it is of the opinion that the player breached their contractual relationship without just cause and should compensate the club for the damages caused.

57. In this context, the DRC acknowledged that its task was to determine: *(i)* the justice of the termination of the Employment Contract by hand of the player; and *(ii)* the consequences that follow. It moved then to the analysis of each topic in turn.

#### **A. Was the employment relationship between the parties terminated with just cause?**

58. As a departure point, the DRC recalled its well-established jurisprudence according to which only a breach or misconduct that is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit the expectation that the continuation of the employment relationship between the parties can continue, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's

fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.

59. In addition to the above, the specific wording of art. 14 par. 2 of the FIFA RSTP establishes that *“any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause”*.
60. With the above in mind, the Chamber turned its attention to the documentation on file and outlined that the following events were deemed to be relevant for the analysis at hand:

Date	Facts
17 June 2022	The parties concluded the Employment Contract and its Amendment valid as from 28 June 2022 until 31 May 2024.
24 October 2022	The club informed the player that he was underperforming, and adopting unsatisfactory and unprofessional behaviour, hence was <i>“taken out of the squad for 30 days”</i> and would have to train alone. The player was invited to file his defence within 24 hours.
25 October 2022	The player filed his defence <i>inter alia</i> disputing all the club’s allegations and requesting to be reinstated to its A-Team.
26 October 2022	The club invited the player to a disciplinary meeting the following day.
1 November 2022	The Board of Directors issued the Disciplinary Decision passed stating <i>inter alia</i> that the player should maintain the individual training and imposing a <b>fine of EUR 4,500</b> <i>“due to lack of performance, lack of harmony with his teammates and not fully following the instructions and directives of the manager”</i> .
Between 1 and 30 November 2022	The parties exchanged several correspondences regarding the individual trainings and the alleged breaches of the contract by the club. The player granted the club multiple deadlines for him to reintegrated to the A-Team and argued that its conduct amounted to abusive behaviour. His allegations were rejected by the club.
30 November 2022	The club informed the player that he would be reintegrated to the A-Team, which was also reported by sporting media.
5 December 2022	The player acknowledged that he was still being discriminated by the club and was not properly reinstated. He requested the breach to be cured.
9 December 2022	The club confirmed that the player was allowed in the A-Team’s trainings and accused the player of adopting unprofessional behaviour.

27 December 2022	The player acknowledged that he was not invited to the winter training camp and ordered to train alone. He requested the club to cure the breach within 3 days.
29 December 2022	The club confirmed that the player had not been invited to join the training camp but argued that such decision was based on his lack of performance and physical condition. It pointed out that the player would be provided with a schedule of individual trainings for conditions and strength.
2 January 2023	The club informed the player that a <b>fine of EUR 21,000</b> was imposed due to his absence in trainings from 30 December 2022 until 1 January 2023.
	The player terminated the Employment Contract claiming just cause.
4 January 2023	The club requested the player to reconsider his decision and withdraw the termination.

61. Against this background, the Chamber found it decisive that:

- neither during the extensive exchanges of correspondences between the parties nor in the context of these proceedings, the club advanced any convincing evidence of the player's lack of performance and unprofessional behaviour. The only documentation filed by the club was: (i) unilateral written statements from its managers / coaching staff; and (ii) inconclusive videos. Those, in the DRC's view, do not lead to any conclusion as to a possible breach of contract by the player, hence possess limited evidentiary weight. Likewise, for the Chamber, the fact that the player joined one day or a short period of training sessions also does not entail that he was duly reintegrated;
- the club not only tacitly but also expressly confirmed the player was (in different moments) demoted from the A-Team and requested to train alone. Once again, the DRC highlighted that despite referring to poor physical conditioning, the club did not advance any supporting documentation, such as medical reports and/or statistics capable of corroborating its decision;
- the player was undisputedly not invited to the winter training camp and was asked to train alone instead. Again, no evidence as to his lack of performance and/or physical conditioning was provided by the club neither during the exchanges of correspondences nor enclosed to its reply and counterclaim; and
- The player was fined in two different opportunities: the first one due to his alleged lack of performance and unprofessional behaviour (as stated, without corroborating evidence); and the second one for his absence during trainings. Such fines were allegedly imposed by the club in line with the Disciplinary Regulations, which the Chamber acknowledged that were neither provided by

the club nor accepted by the player.

62. Bearing in mind the foregoing as well as the principle of burden of proof, the DRC was convinced that (i) the player was indeed segregated from the rest of the A-Team in different opportunities, as well as unequivocally excluded from a winter training camp; and (ii) the player consistently tried to contact the club and allowed it to comply with the terms of the Employment Contract, to no avail.
63. Furthermore, the Chamber also outlined that it found no proof in the case file that the player received and accepted the Disciplinary Regulations, as well as no convincing evidence the alleged breaches by the player that led to the imposition of fines totalling EUR 25,500 (*i.e.*, more than half of his salary). Furthermore, the DRC noted that for the first fine, the player had a single day to file his reply and avail himself in a meeting, whereas in the second fine, his right to be heard was completely ignored.
64. On top of the above, the DRC recalled that its jurisprudence is also solid to establish that poor performance of a player is not a valid reason not to pay his remuneration and/or to terminate a contract, as this is a purely unilateral and subjective evaluation by a club and/or a member association. Consequently, besides being separated from the rest of the club's squad, the Chamber was also of the opinion that the player (i) was illegitimately fined by the club in two different opportunities; and (ii) had outstanding remuneration amounting to at least EUR 70,000 *i.e.*, almost two entire salaries.
65. Based on all the abovementioned consideration, the DRC concluded that, from any angle, the player had a just cause to terminate the contract due to the abusive conduct of the club (*cf.* art. 14, par. 2 of the Regulations). It followed that the counterclaim of the club was rejected, And the same shall endure the consequences of the aforementioned termination.

#### **B. What are the consequences that follow?**

66. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the club.

##### *(i) Outstanding remuneration*

67. First and foremost, the Chamber observed that the player claimed to be entitled to EUR 72,500 as outstanding remuneration, corresponding to outstanding salaries (EUR 66,500) and allowances (EUR 6,000).
68. The club, on the other hand, claimed that its debt amounts to EUR 70,627 *minus* the two fines imposed on the player.
69. In view of this dissent between the parties, the DRC recalled the contents of the Employment Contract and its Amendment and observed that the player should have

received to the following amounts until the date of the termination of the employment relationship (*i.e.*, until December 2022):

Due date	Reference	Amount (EUR)
June 2022	Sign-on fee / advanced payment	40,000
30 August 2022	Salary of August 2022	38,000
30 August 2022	Allowance of August 2022	1,000
30 September 2022	Salary of September 2022	38,000
30 September 2022	Allowance of September 2022	1,000
30 October 2022	Salary of October 2022	38,000
30 October 2022	Allowance of October 2022	1,000
30 November 2022	Salary of November 2022	38,000
30 November 2022	Allowance of November 2022	1,000
30 December 2022	Salary of December 2022	38,000
30 December 2022	Allowance of December 2022	1,000
<b>TOTAL</b>		<b>235,000</b>

70. In contrast, the Chamber acknowledged that the club undisputedly made the following payments to the player under the reference of salaries:

Date of payment	Reference	Amount
July 2022	Sign-on fee / advanced payment	EUR 40,000
19 August 2022	Salary	EUR 20,000
30 August 2022	Salary	EUR 18,000
30 September	Salary	EUR 21,000
	Salary	EUR 899
21 October 2022	Salary	EUR 18,000
8 November 2022	Salary	EUR 16,500
29 December 2022	Salary	EUR 30,000
<b>TOTAL</b>		<b>EUR 164,399</b>

71. In addition, the club submitted copy of hotel invoices alleging that they corresponded to the accommodation allowance due to the player. Nevertheless, the DRC highlighted that part of the invoices does not include the name of the player, and, in any event, there is no clear connection between the amounts, the currency, and the dates of payment of such amounts.
72. As such, the DRC determined that it was impossible to establish if such amounts indeed corresponded to the monthly rent / expenses payable by the player or if they were just extra expenses incurred for trips and matches, which should also be covered by the club. Consequently, the Chamber decided that such amounts should not be taken into consideration, in that the burden of proof of the club was not met.

73. On this note, the DRC decided that the player should be entitled to the balance of EUR 70,601 net (*i.e.*, EUR 235,000 *minus* 164,399) as outstanding remuneration.
74. Taking into consideration that the player's request was not specified, and neither were the payments made by the club, the Chamber also ruled that the player should be entitled to interest over the abovementioned amount as from the date of the termination of the Employment Contract (*i.e.*, 2 January 2023) until the date of effective payment.
75. For the sake of completeness, the DRC found it noteworthy that no deduction was applied over the outstanding remuneration awarded to the player, as far as the fines imposed by the club were deemed unlawful (*cf.* §61 *et. sq.* *supra*).

*(ii) Compensation for breach of contract*

76. In continuation, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
77. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
78. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
79. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of EUR 648,000 net serves as the basis for the determination of the amount of compensation for breach of contract, broken down as follows:
  - EUR 190,000 as the salaries from January until May 2023 à EUR 38,000 each;

- EUR 5,000 as the allowances from January until May 2023 à EUR 1,000 each;
  - EUR 441,000 as the salaries and advanced payments for the season 2023/2024; and
  - EUR 12,000 as the allowances for the season 2023/2024.
80. At this point, the DRC clarified that the residual salaries for the season 2023/2024 were calculated taking into consideration the participation of the club in the TFF League 1, since a potential promotion was of speculative nature only. Likewise, the allowances were taken into consideration insofar as, in the Chamber's view, they are properly quantified in the Employment Contract and constitute part of the fixed remuneration due to the player.
81. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
82. Indeed, the player found employment with Hapoel. In accordance with the pertinent employment contract, the player was entitled to a salary of ILS 95,287; and an allowance of ILS 4,500 per month. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of EUR 135,580.16, broken down as follows:
- ILS 476,435 or EUR 129,466.03 as the salaries from February until May 2023; and
  - ILS 22,500 or EUR 6,114.13 as the allowances from February until May 2023.
83. The Chamber pointed out that the conversion rate used was the one included in the contract (*i.e.*, 1 EUR = 3.68). Likewise, it added that – alike in the calculation of the residual value of the Employment Contract – the allowances offered to the player were also taken into consideration for the calculation of the mitigation.
84. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations and determined that no additional compensation should be awarded in the case at hand, insofar as termination of the Employment Contract was not grounded on outstanding remuneration, but rather on the overall abusive conduct of the club.
85. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of EUR 512,419.84 net to the player (*i.e.*, EUR 648,000 *minus* EUR 135,580.16), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.



86. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% *p.a.* as of 2 January 2023 until the date of effective payment.

#### **ii. Sporting sanctions**

87. The Chamber noted that the Respondent had also in many occasions in the recent past been held liable by the Football Tribunal for the early termination of employment contracts without just cause, namely in the following cases: FPSD-4276, FPSD-6637, and FPSD-8370.

88. Under article 17 par. 4 of the Regulations, in addition to the obligation to pay compensation (if any), sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period.

89. As to the protected period, this is defined in the Regulations as *"a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28<sup>th</sup> birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28<sup>th</sup> birthday of the professional"*.

90. In the present case, the player was older than 28 years old when he signed the Employment Contract. For two years or two entire seasons had not elapsed by the time the contract was terminated, the Chamber confirmed that said termination took place within the protected period.

91. At the same time, the DRC recalled that both (a) the player terminated the employment relationship with the club with just cause, as the club had been found to have breached the contract; and (b) the club was a repeat offender in this respect. As such, and by virtue of art. 17 par. 4 of the Regulations, the Chamber decided that the Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

92. For the sake of completeness, the Chamber recalled that in accordance with art. 24 par. 3 lit. a) of the Regulations, the consequences for failure to pay relevant amounts in due time may be excluded where the Football Tribunal has imposed a sporting sanction on the basis of art. 17 in the same case. Consequently, the Chamber confirmed that the consequences for failure to pay relevant amounts in due time envisaged by art. 24 of the Regulations were excluded in the present matter, and that should the Respondent fail to timely comply with this decision, it would be for the FIFA Disciplinary Committee to adopt the necessary measures in accordance with the FIFA Disciplinary Code.

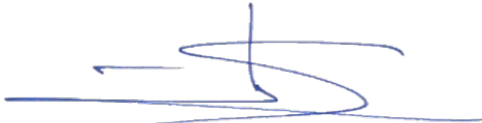
#### **d. Costs**

93. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *“Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent”*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
94. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
95. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

#### IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Arvydas Novikovas, is partially accepted.
2. The Respondent/Counterclaimant must pay to the Claimant / Counter-Respondent the following amounts:
  - **EUR 70,601 net as outstanding remuneration** plus 5% interest *p.a.* as from 2 January 2023 until the date of effective payment; and
  - **EUR 512,419.84 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 2 January 2023 until the date of effective payment.
3. Any further claims of the Claimant/Counter-Respondent are rejected.
4. The counterclaim of the Respondent / Counterclaimant, Samsunspor, is rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. The Respondent/Counterclaimant shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.
7. If full payment is not made **within 30 days** of notification of this decision, the present matter shall be submitted, upon request of the Claimant/Counter-Respondent, to the FIFA Disciplinary Committee.
8. This decision is rendered without costs.

For the Football Tribunal:



**Emilio García Silvero**  
Chief Legal & Compliance Officer

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**NOTE RELATED TO THE APPEAL PROCEDURE:**

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

**NOTE RELATED TO THE PUBLICATION:**

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

**CONTACT INFORMATION**

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